

# **Nashville District**

## **Human Resources Newsletter**

### **“News You Can Use”**

**Issue 15-12-04**  
**15 December 2004**

The purpose of this newsletter is to keep Nashville District employees informed about personnel issues, concerns, and topics. You are encouraged to review the information and disseminate to your organization. If there are particular areas of interest that you would like to see addressed in future issues, an article of general interest, or general comments, please contact John Restey at 615-736-5538 or [John.G.Restey@lrm02.usace.army.mil](mailto:John.G.Restey@lrm02.usace.army.mil).

## **Coming Events:**

**15 October –3 January 2005---Thrift Saving Plan (TSP) Open Season**

## **General News:**

### **Can a Contractor Perform Personnel/Supervisory Duties ?**

The subject of Contractor interaction with Federal Employee's has always been an issue of many debates. In attempting to clearly differentiate between the two types of employee's (Federal and Contractor), I researched through various laws and DA publications as well as contacting DoD CPMS (FAS) representatives, Ms. Linda Marchesani and Suzzane Rowlson. The research supported the following -

- 1) There are no DA Publications, speaking to this subject.
- 2) The United States Code 5 USC 2105 (attach 1) defines what constitutes a Federal Employee.
- 3) The United States Code 5 USC 1104 (attach 2) defines to whom the President Of The United States can delegate personnel authorities too.

### **What do the findings support?**

Essentially, as a result of the USC's defining Federal Employee status and directing delegated personnel authorities, we find that only Federal Employee's can be delegated Personnel Authorities and that a Contractor is not a Federal Employee. This means that Contractor Personnel do not have the delegated authority to Manage, Supervise, Lead or in anyway exhibit actions which could be interpreted as directive in nature, to Federal Employee's.

## **How does it impact the way that we do business, i.e., the interaction between the Federal Employee and Contractor Personnel?**

Based on the 5 USC 2105 definition of Employee, a contractor is not an employee. The President, Congressman, military member, etc. are employees for this purpose. So, since a contractor isn't an employee, a contractor may not supervise an employee. Clearly, the role of contractor personnel is to provide expert, professional contract services for specific tasks required by the Federal Government to expedite those specific services. They do this in support of the efforts of federal personnel, therefore, while federal personnel can provide various types of managerial responsibilities, as delineated by the contract personnel's Contract, to direct the efforts of contractor personnel, the reverse is prohibited.

Extract from Article by *Ron Vanderhoof*

Productivity Enhancement Division

Army Civilian Human Resources Agency (DAPE-CP-MAP)

### **NATIONAL SECURITY PERSONNEL SYSTEM (NSPS) UPDATE**

The Department of Defense (DoD) is working with the Office of Personnel Management (OPM) on finalizing the NSPS enabling regulations, which will be published in the Federal Register for public comment and the statutory collaboration with employee representatives.

We expect the first phase of Spiral One implementation as early as July 2005. The DoD NSPS Program Executive Office (PEO) is arranging for a planning conference for organizations participating in the first phase of NSPS implementation. The meeting will be conducted at MacDill Air Force Base, FL, during the week of January 24, 2005.

For the latest information on NSPS developments, visit the Office of the Secretary of Defense NSPS web site at <http://www.cpms.osd.mil/nsps/index.html> and here on the Civilian Personnel OnLine (CPOL) NSPS web site for Army-specific guidance.

### **RESTORATION OF LEAVE OF EMERGENCY ESSENTIAL EMPLOYEES SERVING IN A COMBAT ZONE**

Service in a combat zone is considered exigency of the public business. In the National Defense Authorization Act of FY 00, (Sec. 1103), Section 6304(d) of title 5, U.S. Code was amended to include emergency essential employees who are serving in a combat zone as exigencies. This means that any leave by reason of such service that is lost by the employee shall be restored to the employee and shall be credited and available in accordance with paragraph (2) of this chapter. For the purpose of this provision,

emergency essential is defined as any employee, temporary or permanent, whose duties are to:

- (1) Provide immediate and continuing support for combat operations or to support maintenance and repair of combat essential systems of the armed forces.
- (2) It is necessary for the employee to perform that duty in a combat zone after the evacuation of nonessential personnel, including any family members of members of the armed forces, from the zone in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone.
- (3) It is impracticable to convert the employee's position to a position authorized to be filled by a member of the armed forces because of a necessity for that duty to be performed without interruption. A nonappropriated fund instrumentality employee is eligible for designation as emergency essential.

## Health and Benefits:

### Flexible Spending Account Open Season Extension

Due to the overwhelming response, the FSAFEDS Open Season has been **extended through 17 December**. If you currently have a FSA, you must register during open season if you wish to be enrolled and have deductions taken in 2005A Health Care FSA (HCFSA) pays for the uncovered or un-reimbursed portions of qualified medical costs. A Dependent Care FSA (DCFSA) allows you to pay eligible expenses for dependent care with pre-tax dollars. All employee contributions to FSAs are made from pre-tax earnings, thereby increasing disposable income. There are no government contributions to the FSAFEDS program. The U.S. Office of Personnel Management (OPM) has contracted with a third party administrator, SHPS, Inc., to manage the program. Employees interested in establishing a DCFSA or HCFSA must do so during Open Season on an annual basis. Account elections will not automatically roll over to future years. An FSA ELECTION IS 100% VOLUNTARY. The FSAFEDS Open Season is held each fall in conjunction with the FEHB Open Season from mid-November to mid-December. Eligible employees may elect up to \$5,000 for a DCFSA and \$4,000 for a HCFSA.

The Federal FSA program is a tax-qualified program based on the guidelines in sections 105, 125, and 129 of the Internal Revenue code.

### USING A FLEXIBLE SPENDING ACCOUNT (FSA) IS AS EASY AS 1-2-3!

. Below are some helpful tips on using your FSA.

1. Determine your annual allotment for a Health Care FSA, Dependent Care FSA, or both. The [FSAFEDS Calculator](#) can assist you. Then, enroll in the Program during Open Season.

2. Starting on January 1, 2005, pay for [eligible expenses](#) out-of-pocket and [submit a claim](#) for reimbursement or you may enroll in our Paperless Reimbursement program. To see if your FEHB plan is currently participating, refer to the [Paperless Reimbursement ORG](#).

3. Receive your reimbursement! You may elect to have your reimbursement deposited directly to an account of your choice through [Electronic Funds Transfer \(EFT\)](#).

Remember to enroll early during this year's Open Season, and beat the "last minute" enrollment rush! Visit [www.FSAFEDS.com](http://www.FSAFEDS.com) to learn more and enroll.

Flexible spending accounts provide an excellent way for employees to reduce their costs for health and dependent care and stretch their hard earned dollars.

### **THRIFT SAVINGS PLAN (TSP) EXTENDED UNTIL JANUARY 3, 2005**

Due to 31 December being a federal holiday, the TSP Open Season will be extended until January 03, 2005. Title 5, Code of Federal Regulations 1600.12(b) states: If the last day of an open season falls on a Saturday, Sunday, or legal holiday, the open season will be extended through the end of the next business day.

## **Food for Thought:**

**No one can go back and make a brand new start. Anyone can start from now and make a brand new ending.**